



California Fair Political Practices Commission

July 19, 1989

Carol J. Marvel
Deputy City Clerk
City of Lodi
City Hall, 221 West Pine Street
Lodi, CA 95241-1910

Re: Your Request for Informal
Assistance
Our File No. I-89-287

Dear Ms. Marvel:

This is in response to your letter requesting advice under the consultant disclosure provisions of the Political Reform Act (the "Act").^{1/} Since the questions you pose are more general in nature and do not refer to a specific consultant or governmental decision, we are treating your letter as a request for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).^{2/}

You attended a recent city clerk's meeting and obtained a copy of the "consultant" disclosure category. You understand its use and purpose in the conflict of interest code but have questions concerning consultants in general. You have asked generally whether consultants are aware of, or object to, the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations unless otherwise indicated.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

disclosure requirements. The Commission advises local jurisdictions on the appropriateness of having a particular consultant covered by the disclosure provisions of the Act. We do not often have direct contact with the consultants themselves. We are not in a position to judge their knowledge of the law or to know all of their questions, reactions or objections.

Consultants often are confused about who in the firm must file disclosure statements, assuming that since a contract is with a firm, it is the firm, not the individuals within the firm, who must file. However, the Commission's regulations clearly provide that consultants are the natural persons within the firm who provide, under contract, information, advice, recommendation or counsel to a governmental agency. (Regulation 18700(a)(2).) (Koppes Advice Letter No. A-88-408; Hayden Advice Letter No. A-84-319, copies enclosed.)

In addition, consultants may assume that their disclosure obligations under the Act will be unduly burdensome and intrusive. Please keep in mind that the agency is required to narrowly tailor the required disclosure to the types of economic interests which are likely to be affected by the consultant in the course of his or her work.

Since your letter also poses specific questions, I will respond to each individually.

QUESTION ONE

The city contracts with auditors, some retained for many years, while others on a one-time only basis. Do these consultants need to file financial disclosure statements?

ANALYSIS AND CONCLUSION

In its conflict of interest code, each agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. Section 87302. Both the definitions of "designated employee" and "public official" include any consultants to an agency who make or participate in such agency decisions. (Sections 82019 and 82048.)

A "consultant" within the meaning of the Act, includes "any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency..." (Regulation 18700(a)(2).) This term does not include, however, a person who:

- (A) Conducts research and arrives at conclusions with respect to his or her rendition of information,

advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2)(A) and (B).

Auditors accomplish several different tasks, such as examining and settling the accounts of any person indebted to an agency and holding money payable into the treasury, verifying monies received by a treasurer, examining the records of a treasurer to determine its consistency with the records of the auditor, impounding revenues, determining agency pro-rata share of contributions or revenues, etc.

If an auditor, in accomplishing his or her tasks or responsibilities, makes or participates in the making of decisions which could affect any private financial interest, that consultant should be covered by the conflict of interest code. For example, if an auditor can recommend legal action be commenced against a business entity to impound revenues, then that auditor should disclose investments and business positions in, and income from business entities located or doing business within the jurisdiction. If an auditor merely verifies the records of a treasurer, there may not be an identifiable financial interest which could be affected.

Generally, an auditor under contract to perform a specific one-time audit to verify the receipts, assets and expenditures of a treasurer, without having the authority to recommend a course of action, is not the type to be covered by the conflict of interest code.

Since you have not provided job descriptions for the types of auditors you contract with, only general information can be provided as a guide to you in deciding what disclosure, if any, would be appropriate. To help you further in this regard, I have enclosed copies of advice letters addressing disclosure for a variety of consultants.

QUESTION TWO

Are there certain financial (dollar figure) limitations involved?

ANALYSIS AND CONCLUSION

Section 87302 requires that the information disclosed by designated employees (which includes consultants) shall be the same as the information required by Sections 87206 and 87207.

Section 87206 requires that investments and real property be disclosed if their value equals or exceeds \$1,000. Section 87207 requires that sources of income aggregating \$250 or more, and gifts aggregating \$50 or more, be disclosed.

The disclosure by consultants is the same as that of other public officials. Once your chief executive officer has determined that a particular consultant must disclose certain types of financial interests, those interests are disclosed at the reporting thresholds described above.

I hope this information has been helpful to you. Should you have some questions pertaining to a specific consultant, please feel free to write the Commission.

Sincerely,

Kathryn E. Donovan
General Counsel

By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

KED/jt
Enclosures

CITY COUNCIL

JAMES W. PINKERTON, Jr., Mayor
JOHN R. (Randy) SNIDER
Mayor Pro Tempore
DAVID M. HINCHMAN
EVELYN M. OLSON
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
TELECOPIER : (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

May 8, 1989

Ms. Jeanette Turville
Legal Division
Fair Political Practices Commission
PO Box 807
Sacramento, CA 95804

Dear Ms. Turville,

We are in need of some additional guidelines in regard to category of "consultant" in our Conflict of Interest Code.

That category is not in our Code at this time which is also in need of updating in other areas as well and is being worked on. I have read the instructions which you passed out on April 19th at the City Clerks workshop but I have a few more questions.

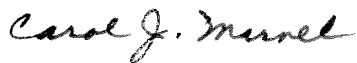
Specifically, some of our consultants (a firm of auditors, for example) have been retained by us for many years; others are hired on a one-time basis. Do they all file?

We understand that the city manager (our chief executive officer) determines who files, but are there certain financial (dollar figures) limitations involved, for example?

I, personally would like to know the reactions of the major consulting firms throughout the state. Have there been many questions and/or objections by them? Are all consulting firms aware of this filing requirement? Our city attorney has pointed out to me that there might be some objection by firms which have numerous consultants on a project.

Further advice from you on this matter will be appreciated.

Yours truly,



Carol J. Marvel
Deputy City Clerk

89-287

CITY COUNCIL

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RECEIVED
MAY 10 1989
CITY CLERK



California Fair Political Practices Commission

May 12, 1989

Carol J. Marvel
Deputy City Clerk
City Hall
221 West Pine Street
Call Box 3006
Lodi, CA 95241-1910

Re: Letter No. 89-287

Dear Ms. Marvel:

Your letter requesting advice under the Political Reform Act was received on May 10, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeanette Turvill, in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, we will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh